UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

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CABLEVISION SYSTEMS NEW YORK CITY CORP.,

Employer

and

TIFFANY OLIVER,

Petitioner

EMPLOYER'S REQUEST FOR REVIEW OF ORDER DISMISSING PETITION

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Union

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INTRODUCTION

The Employer, Cablevision Systems New York City Corp. ("Employer"), requests review pursuant to Sections 102.67(b) and 102.71(c) of the National Labor Relations Board's Rules and Regulations of an "Order Dismissing Petition" with respect to a representative petition (Case 29-RD-138839) filed by bargaining unit employee Tiffany Oliver ("Petition") to decertify Local 1109 of the Communications Workers of America, AFL-CIO (the "Union"), issued by the Regional Director ("RD") of Region 29 on November 12, 2014. The Employer submits that the November 12, 2014 Order Dismissing Petition (the "Order") is without legal basis and that the Petition should be reinstated.

FACTUAL BACKGROUND

The Union was certified as the bargaining representative of field service technicians, outside plant technicians, audit technicians, inside plant technicians, construction technicians, network fiber technicians, logistics associates, regional control center representatives and coordinators at the Employer's Brooklyn, New York facilities on February 7, 2012.

On January 24, 2013, shortly prior to the expiration of the certification year, the Union filed an unfair labor practice charge alleging that the Employer had engaged in a pattern of surface bargaining. On the morning of January 30, 2013, 22 employees engaged in a strike; that same morning, the Employer informed those

employees that they had been permanently replaced. On January 31, 2013, the Union filed an unfair labor practice charge alleging that those employees permanently replaced by the Employer had been unlawfully discharged. On February 15, 2013, Petitioner filed a first RD petition ("First Petition") seeking to decertify the Union.[1]

The Regional Director issued a consolidated complaint on the pending unfair labor practice charges on April 29, 2013, Case Nos. 02-CA-085811, *et al.* (the "First Complaint," attached as Exhibit 1). The day after the issuance of the First Complaint, April 30, 2013, the Regional Director issued an order dismissing the First Petition (the "First Order," attached as Exhibit 2). As noted in the First Order, the First Complaint alleged, *inter alia*, that the Employer violated Sections 8(a)(1), (3) and (5) of the Act "by engaging in surface bargaining, threatening employees for engaging in union activity, and discharging twenty-two (22) Brooklyn Cablevision employees for their union and protected concerted activity." First Order at p. 1.

A hearing on the allegations contained in the First Complaint was held before ALJ Steven Fish over several days in late 2013.

As early as July 31, 2014, Cablevision was informed that employees were collecting signatures for the instant Petition. This fact is undisputed because bargaining unit employees who were voluntarily soliciting signatures for the Petition were subjected to threatening and intimidating acts by a paid employee of the Union on that date. The Union's unlawful actions are the subject of an unfair labor practice charge (29-CB-134066) filed by the Company on August 4, 2014 (attached as Exhibit 3).[2] The Company was informed by unit employees in August 2014 that the Petition included 100 or more signatures on it.

Petitioner filed the Petition on October 16, 2014. On November 6, 2014, the Regional Director issued a new consolidated complaint, Case Nos. 29-CA-134419, *et al.* ("Second Complaint," attached as Exhibit 4). As noted in the Order, the Second Complaint alleges that Cablevision violated Sections 8(a)(1), (3) and (5) of the Act "by implementing unilateral changes to employees' terms and conditions of employment, threatening employees for engaging in union activity, issuing a warning to an employee for engaging in protected or concerted activity, and the discharge of an employee for his union and protected concerted activity." Order at p. 1. This conduct is predominantly alleged to have occurred in August and September 2014, after Cablevision was informed that 100 or more bargaining unit employees (in a unit of approximately 270 employees) had signed the petition.

Shortly after issuing the Second Complaint, on November 9, 2014, the Regional Director issued the Order dismissing the Petition (attached as Exhibit 5). The Order states that "[t]he pending allegations [in both the First Complaint and the Second

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[1] Petitioner initially filed a RD Petition on February 7, 2013, exactly one year after the Union was certified as the bargaining representative. Petitioner thereafter withdrew the initial petition (when the Union claimed it was filed one day too soon), and filed the First Petition on February 15, 2013.

[2] The Employer's appeal of the Region's dismissal of this Charge (Case 29-CB-134066) is currently pending before the Office of Appeals.

Complaint], if true, prevent a question concerning representation from being raised because of the unremedied Section 8(a)(5) violations. Moreover, the above-listed allegations, if found to be committed, destroy the laboratory conditions requisite for determining the desires of Brooklyn Cablevision employees regarding continued representation by the Communications Worker of America, AFL-CIO." Order at p. 1-2.[3]

On December 4, 2014, ALJ Fish issued a Decision finding, *inter alia*, that (1) the Company did not engage in bad faith surface bargaining and (2) the 22 employees were not engaged in an unfair labor practice strike on January 30, 2013 and therefore were presumed subject to being permanently replaced, but that the Company did not meet its burden of proving that all permanent replacements were hired before the strikers were informed of their replacement. December 4, 2014 Decision, Case Nos. 02-CA-085811, et al. ["Decision"] at p. 252, 263-64 (relevant pages attached as Exhibit 6). Thus, as determined by ALJ Fish, there were no unremedied 8(a)(5) allegations from the First Complaint which would "prevent a question concerning representation from being raised." The additional Brooklyn-related violations that ALJ Fish found, concerning remarks allegedly made by two supervisors to specific individuals (each an alleged 8(a)(1) violation), both date from January or February 2013, and thus are remote in time from the petition. These are isolated acts and there is no evidence that the remarks were transmitted to the wider bargaining unit and thus no basis to conclude that these acts could lead to employee disaffection with the Union. The last, relatively minor allegation from the First Complaint – that in August 2013, the Company unilaterally instituted training on one new piece of equipment (hand-held meters) and then stopped the training two weeks later (essentially returning the employees to status quo) – was not addressed in the First Order because it had not yet occurred at the time the First Order was issued. It did, however, take place months after the filing of the First Petition and over a year prior to the gathering of signatures for the Petition.

ARGUMENT

It is undisputed that the instant Petition was filed well after expiration of the certification year, that no contract bar exists, and that the Employer did not unlawfully assist in the preparation or filing of the Petition.[4] The Regional Director dismissed the Petition based solely on certain *alleged* unfair labor practices, some of which (those alleged in the First Complaint) occurred more than a year prior to the gathering of signatures in the instant Petition and others (those alleged in the Second Complaint) that occurred after many, if not most, of the signatures were gathered on the

[3] The Second Complaint alleges three Section 8(a)(5) violations – that (1) the Employer unilaterally instituted a change in cell phone service providers, in January 2014, resulting in the elimination of the "Next Mail" feature exclusive to the Company's prior cellular service provider; (2) the Employer unilaterally instituted changes in its ETAdirect timekeeping policy, resulting in a final written warning being issued to one unit employee (absent evidence that other employees were informed of this warning); and (3) Company CEO James Dolan engaged in direct dealing with employees during his speech to unit employees on September 9. The Employer contends that all are without merit.

[4] Indeed, although the Union filed an unfair labor practice alleging that the Company had "unlawfully assisted an anti-union campaign," (Case 29-CA-135822) on August 28, 2014, this allegation was later withdrawn following the Region's investigation and decision to dismiss it.

instant Petition. The Regional Director, however, did not invoke the Board's blocking charge doctrine with regard to these alleged unfair labor practices, but instead dismissed the Petition without even a hearing to determine whether the allegations are true, and if so, whether a causal nexus exists between the alleged unlawful actions and employee disaffection. This decision is contrary to Board law, due process and constitutional protections, and should be overturned.

A. A Decertification Petition May Not Be Dismissed Based on Alleged Unfair Labor Practices Absent a Finding of an Unfair Labor Practice and a Casual Nexus After An Evidentiary Hearing.

A timely filed and otherwise valid decertification petition may not be dismissed based on mere *allegations* of unfair labor practice charges absent a finding, after a hearing, that the employer actually engaged in an unfair labor practice and that the purported unfair labor practice caused its employees' disaffection with the union. *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004). *See* NLRB Casehandling Manual §11733.2(a). Dismissing a petition without such findings, made after a hearing, violates Section 7 of the NLRA. *Truserv Corp.*, 349 NLRB 227 (2007). Indeed, as the Board has recognized, dismissing a decertification petition "deprives" employees "of their Section 7 rights" even where the Regional Director makes such findings, but does so without first conducting an evidentiary hearing. *Saint Gobain*, 342 NLRB 434. Rejecting a decertification petition out of hand based on unreviewed, unsubstantiated allegations without affording a hearing also offends basic principles of due process and unreasonably burdens employees' freedom of association by forcing them, without review, to remain members of a union to which a majority may no longer wish to belong. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (internal quotation marks omitted)); *Carpenters Local Union No. 1846 of United Bhd. of Carpenters & Joiners of Am. v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 512 (5th Cir. 1982) ("One of the principal policies of the national labor laws . . . is the protection of the exercise by workers of full freedom of association."); 29 U.S.C. § 157 (Section 7 rights include the "right to refrain"); *cf. Harris v. Quinn*, 134 S. Ct. 2618, 2639-2641 (2014). *A fortiori*, Section 7, due process, and the First Amendment forbid dismissing the petition if no finding is made at all that the employer engaged in an unfair labor practice that tainted the petition. *Cf. BPH & Co., Inc. v. NLRB*, 333 F.3d 213, 222 (D.C. Cir. 2003) (vacating Board ruling that relied on "*charged* conduct" by the employer never adjudicated to be an unfair labor practice "to support its conclusion that the Company caused the employees to become disaffected with the union").[5]

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[5] The federal courts have, moreover, recognized the incentive the Board's often reflexive application of its blocking rule gives unions to file frivolous charges to block the processing of decertification petitions. *See, e.g., NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71 (7th Cir. 1968) (criticizing dismissal of decertification petition without a hearing on the merits of the alleged unfair labor practice charge); *NLRB v. Minute Maid Corp.*, 283 F.2d 705, 710 (5th Cir. 1960) (criticizing dismissal of decertification petition without a hearing due to pending ULP and noting "the union cannot avoid the consequences of a loss of representation by the mere filing of an unfair practices charge against the employer, Nor is the Board relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put

In *Saint Gobain*, the Regional Director dismissed a decertification petition, finding that the employer's alleged unilateral change in health insurance benefits caused employee disaffection with the union. *Id.* at 434. The Board held that "such a factual determination of causal nexus should not be made without an evidentiary hearing." *Id.* Absent a hearing to determine whether a causal nexus exists, the "employees are deprived . . . of their Section 7 rights on the question of union representation." *Id. See* Operation Memo 05-20 (December 9, 2004) (Board in *Saint Gobain* concluded that "it was not appropriate to 'speculate' without facts established at a hearing, that there was a causal relationship between the conduct and the disaffection manifested by the employees in the decertification petition.").

The Board, in *Truserv Corp.*, 349 NLRB 227 (2007), reiterated that decertification petitions should not be dismissed "absent a finding of a violation of the Act or an admission by the employer of such a violation," because "to do so would unfairly give determinative weight to allegations of unlawful conduct and be in derogation of employee rights under Section 7 of the Act." *Id.* at 228. Even where the employer has settled unfair labor practice charges, the Region must conduct a hearing to determine whether the employer's alleged actions caused employee disaffection. *Id.* Furthermore, "the fact that the alleged actions occurred prior to the filing of the decertification petition provides no basis for a conclusion that the petition was tainted by unlawful conduct." *Id. See also Wellington Industries, Inc.*, 359 NLRB No. 18, *4 (2012) ("Unlike in *Saint Gobain*, where the charges against the employer remained unproven, the Board here has already found that the employer committed multiple unfair labor practices").

The Regional Director's decision to vitiate the Section 7 rights of bargaining unit employees based on his admittedly untested conclusions flies in the face of the applicable Board decisions that leave no doubt that a due process, evidentiary hearing is required to determine whether there is, in fact, **both an unfair labor practice and** a causal nexus between the Employer's alleged actions and employee disaffection manifested in the Petition. *See TruServ Corp.*, at 349 NLRB 232 (assuming that the employer has engaged in unlawful conduct requiring dismissal of the petition "is inconsistent with fundamental due process"); *Wellington Industries*, 359 NLRB No. 18 at *4 (in denying request for review, the Board stated that the Regional Director "did not dismiss the petition outright, as in *Saint Gobain*, but decided to hold it in abeyance pending the employer's compliance with the Board's remedial Orders."). As the Board stated in *Saint Gobain*, "To speculate is to deny employees their fundamental Section 7 rights." *Saint Gobain*, 342 NLRB at 434; *See Truserv*, 349 NLRB at 232. The allegations set forth in the Second Complaints are just that – allegations. To this end, the Order notes that the allegations would prevent an election "if true" or "if found to be

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the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented."); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1457-60 (D.C. Cir. 1997) (affirming Board's "rebuttable presumption" of a causal relationship between "a Section 8(a)(5) refusal to recognize . . . and a subsequent loss of majority support for the union" but finding Board applied the standard in an "arbitrary" manner).

committed." Order p. 1. But Section 7, due process, and Board precedent preclude dismissing a petition unless and until a proper finding (after a hearing) is made that the allegations *are* true, that an unfair labor practice *was* committed, and that it did taint the petition.

B. There Is No Evidence of Any Causal Nexus Between the Alleged Unfair Labor Practices and the Employee Disaffection Underlying the Petition.

The Regional Director's failure to conduct a hearing before dismissing the petition was highly prejudicial because a hearing would reveal that there is no evidentiary basis for finding that petitioner engaged in an unfair labor practice that tainted the petition. The Order dismisses the Petition based on "the pending allegations" in the First and Second Complaint, which "if true, prevent a question concerning representation from being raised because of the unremedied Section 8(a)(5) allegations." Order at p. 1-2. The primary Section 8(a)(5) allegation contained in the First Complaint is that the Company engaged in surface bargaining between February 2012 and December 2013. ALJ Fish, however, recently recommended dismissal of that charge, finding that the Company had engaged in "hard, but lawful bargaining." Decision at p. 252. The only other Section 8(a)(5) allegation contained in the First Complaint, which was added by the General Counsel immediately prior to the hearing on the charges, is exceedingly minor and remote in time to the instant Petition. This allegation concerns the Company's unilateral implementation and almost immediate withdrawal of training on a single new technology (hand-held meters) in August 2013 – approximately one year prior to the gathering of signatures in support of the Petition. There is absolutely no evidence that the employee disaffection that led to the Petition in any way was caused by the Company's allegedly unlawful training or withholding of training on a single piece of equipment over a year ago. And, indeed, it is unlikely that any such causal nexus exists. Regardless, one cannot be assumed, particularly where, as here, it consists of a minor alleged violation remote in time to the filing of the Petition.

With regard to the charges included in the Second Complaint, the three alleged Section 8(a)(5) violations all are minor, discrete, isolated alleged actions that are either remote in time to the Petition or occurred after employees likely had gathered enough signatures to petition for a decertification election. The first allegation involves the Company's alleged unilateral replacement of bargaining unit employees' Sprint cell phones with Verizon cell phones. This change, which was made to improve cell phone service and coverage for employees, resulted in the loss of a "push-to-talk" or "Next Mail" feature that exists only on Sprint phones. The Region and General Counsel assert – and the Company strongly denies – this change is material. (The Company also asserts that the Union agreed to the change and presented compelling written evidence of the Union's agreement to the Region.) Regardless, the change was implemented in late January and early February 2014, several months prior to employees' decertification efforts and eight months prior to the filing of the Petition.[6] There is no

[6] In fact, the change occurred so long ago that it is time-barred because the charge was filed on August 8, 2014, more than six months after the alleged unilateral change.

evidence that this minor change, which actually resulted in better phone service for unit employees, in any way caused employees' disaffection with the Union. Certainly, no conclusion that any nexus exists can be drawn absent a hearing.

The second Section 8(a)(5) allegation in the Second Complaint concerns the Company's alleged use of the ETAdirect time keeping system to issue a written warning to one bargaining unit employee. (In fact, the employee was disciplined for falsifying company records and lying about it to management, not the failure to properly use the ETA direct system.) It is hard to conceive that the Regional Director has concluded that the use of a time keeping system to issue one warning to a single unit employee caused employee disaffection with the Union to such an extent that more than 100 employees signed a decertification petition. The Regional Director cannot neither assume nor conclude that a casual nexus exists between this single warning and employee support for the petition absent an evidentiary hearing.

The third Section 8(a)(5) allegation in the Second Complaint relates to the speech given by Mr. Dolan on September 9, 2014. The Region alleges that certain of Mr. Dolan's statements constitute direct dealing with the bargaining unit employees. First, the speech was given more than a month after the Company first learned that a decertification petition was being circulated and after the Company was informed that more than 100 employees had signed the Petition – in excess of the number of signatures required to file a petition seeking a decertification election. Second, the Regional Director has not presented any evidence that the alleged statement(s) by Mr. Dolan in any way caused the considerable employee disaffection with the Union, which clearly was present well before the speech. Accordingly, a conclusion that statements made by Mr. Dolan on September 9th caused employee disaffection cannot be drawn absent an evidentiary hearing.[7]

The allegations in the Second Complaint have not been tried; documents have not been scrutinized, nor witnesses examined and cross-examined. More importantly, the allegations in the First Complaint referenced in the Order – that the Company engaged in surface bargaining and replaced (and discharged) employees who were engaged in an unfair labor practice strike – have not been proven to be "true" or to have been "committed," as demonstrated by ALJ Fish's ruling on the matter. The Regional Director's Order dismissing the petition without holding the requisite evidentiary hearing clearly is in conflict with the Board's decisions and cannot stand.

Absent an evidentiary hearing, there is no evidence to suggest that the signatures gathered well after (over a year) or before the unfair labor practices alleged in the First and Second Complaints, respectively, took place were somehow tainted – indeed, logically, this could not be the case. No one, other than the employees who signed the employee petition, knows when it was circulated and whether the alleged

[7] The final allegation from the Second Complaint cited by the Regional Director is not an alleged Section 8(a)(5) violation but concerns the alleged discharge of a single unit employee for protected activity. The discharge occurred in August 20, 2014, well after the employees' decertification drive began and at a time when 100 or more employees had signed the petition. It would be improper, therefore, to conclude that this discharge caused employees' disaffection with the Union.

unfair labor practices caused employees to sign the petition. Without a hearing, the Regional Director cannot demonstrate that employees were or were not affected by the alleged violations. It is not the Employer's place to gather such evidence; if it attempted to do so, the Union and RD would allege unlawful interrogation.

The Regional Director's attempt to rely solely on the allegations that the Company engaged in certain unfair labor practices in August and September 2014 wholly ignores the serious question of whether the showing of interest was affected by these incidents when employees were collecting signatures as early as July 2014. Clearly, any employees who signed the Petition prior to alleged unfair labor practices committed in August or September of 2014 could not possibly have been affected by an event that had not yet occurred. Conduct that occurred far before the Petition was signed likewise cannot lead to an inference that it created an atmosphere of disaffection with the Union[8] and without a hearing, there can be nothing but speculation that it did.

CONCLUSION

For the forgoing reasons, the Employer's request for review of the Order Dismissing Petition should be granted, the Order should be overturned, and the Petition should be reinstated.

[8] *Cf. Garden Ridge Mgmt., Inc.*, 347 NLRB 131, 134 (2006) (five-month delay weighed against finding that unfair labor practices caused employee sentiment against union); *Lexus of Concord, Inc.*, 343 NLRB 851, 852 (2004) (no temporal proximity when lapse of three months).

Dated: New York, New York.
December 15, 2014

Respectfully submitted,

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CERTIFICATION OF SERVICE BY AND MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that, on December 15, 2014, he caused a true and correct copy of the attached Employer's Request for Review of Order Dismissing Petition on Behalf of Cablevision Systems New York City Corporation and CSC Holdings, LLC to be served upon the petitioner, counsel for the General Counsel and counsel for the Charging Party by first-class mail in a postage-prepaid, properly addressed envelope at the following addresses designated by each for this purpose, respectively:

Tiffany Oliver
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Brooklyn, NY 11236

Mr. James G. Paulsen, Regional Director
National Labor Relations Board
Two MetroTech Center - Suite 5100
Brooklyn, NY 11201-3838

Gabrielle Semel, Esq., District Counsel
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New York, New York 10001-5013

Dated: December 15, 2014 at
New York, New York.

J. Patrick Butler

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CABLEVISION SYSTEMS NEW YORK CITY CORPORATION	**Case Nos. 29-CA-097013**
	29-CA-097557
and	**29-CA-100175**
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO	

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 29-CA-097013, 29-CA-097557, and 29-CA-100175 which are based on charges filed by COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (Charging Party) against CABLEVISION SYSTEMS NEW YORK CITY CORPORATION (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1(a). The charge in Case 29-CA-097013 was filed by the Charging Party on January 24, 2013, and a copy was served by regular mail on Respondent on January 25, 2013.

(b). The first amended charge in Case 29-CA-097013 was filed by the Charging Party on January 28, 2013, and a copy was served by regular mail on Respondent on January 28, 2013.

(c). The second amended charge in Case 29-CA-097013 was filed by the Charging Party on April 26, 2013, and was served by regular mail on Respondent on April 26, 2013.

(d). The charge in Case 29-CA-097557 was filed by the Charging Party on January 31, 2013, and a copy was served by regular mail on Respondent on February 4, 2013.

(e). The first amended charge in Case 29-CA-097557 was filed by the Charging Party on February 19, 2013, and a copy was served by regular mail on Respondent on February 21, 2013.

(f). The second amended charge in Case 29-CA- 097557 was filed by Charging Party on April 25, 2013, and was served by regular mail on Respondent on April 26, 2013.

(g). The charge in Case 29-CA-100175 was filed by the Charging Party on March 12, 2013, and a copy was served by regular mail on Respondent on March 13, 2013.

2(a). At all material times, Respondent a domestic corporation with its corporate office located at 1111 Stewart Avenue, Bethpage, New York, and with facilities located in Brooklyn, New York, has been engaged in the business of providing broadband cable and communication services to residential and commercial customers in Brooklyn.

(b). Annually, in the course and conduct of its business operation described above in paragraph 2(a), the Employer has derived gross revenues excess of $500,000, and has purchased goods, products and materials valued in excess of $5,000 directly from points located outside the State of New York.

(c). At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time field service technicians, outside plant technicians, audit technicians, inside plant technicians, construction technicians, network fiber technicians, logistics associates, regional control center (RCC) representatives and coordinators employed by the Employer at its Brooklyn, New York facilities; excluding all other employees, including customer service employees, human resource department employees, professional employees, guards, and supervisors as defined in Section 2(11) of the Act.

5. On February 7, 2012, following the conduct of an election in Case No. 29-RC-070897, the Board certified the Charging Party as the exclusive collective-bargaining representative of the Unit.

6. At all times since February 7, 2012, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

7(a). At various times from about May 30, 2012, through March 4, 2013, Respondent and the Charging Party met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b). During the period described above in paragraph 7(a), Respondent engaged in surface bargaining with no intent of reaching agreement by: (1) refusing to meet at reasonable times; (2) refusing to discuss economic issues until non-economic issues were resolved; (3) insisting on changing the scope of the certified bargaining unit; (4) rigidly adhering to proposals that are predictably unacceptable to the Charging Party; (5) refusing to discuss a union security clause and then raising philosophical objections to such clause; (6) submitting regressive proposals to the Charging Party; (7) withdrawing from a tentative agreement; (8) refusing to

discuss mandatory subjects of bargaining; and (9) by significantly delaying the provision of relevant wage information to the Charging Party.

(c). By its overall conduct, including the conduct described above in paragraph 7(b), Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

8(a). Since about August 23, 2012, the Charging Party has requested, in writing, that Respondent furnish it with the following information: Documents related to changes made during the period April 1, 2012, to the present, with respect to the wages and benefits, Career Progression Plan, and Salary Matrix of all non-Brooklyn Cablevision employees, employed in the same or similar job classifications as the Brooklyn CWA bargaining unit employees.

(b). The information requested by the Charging Party, as described above in paragraph 8(a) is necessary for, and relevant to, the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c). From about September 5, 2012, to about March 6, 2013, Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above in paragraphs 8(a) and (b).

9. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Daryl Gaines	Area Operations Manager
Rick LaVesque	Vice President

10. At all material times, Harry Hughes held the position of Respondent's Corporate Investigator for Respondent's Security Department and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

11. About January 24, 2013, Respondent, through Daryl Gaines, instructed employees not to engage in activities in support of the Charging Party.

12. About February 7, 2013, Respondent, by Harry Hughes, in front of the Madison Square Garden Arena in New York City, engaged in surveillance of employees engaged in union activities.

13. About the first week of February 2013, Respondent, by Rick LaVesque, in his office at Respondent's 96th Street facility, informed a Unit employee that it was futile for the employee to support the Charging Party because bargaining for a contract with Respondent was futile.

14(a). About January 30, 2013, certain employees of Respondent ceased work concertedly and engaged in a strike.

(b). The strike described above in paragraph 13(a) was caused by Respondent's unfair labor practices described above in paragraphs 7(a) through (c).

15(a). About January 30, 2013, Respondent, by Rick LaVesque, informed the following employees engaged in the unfair labor practice strike described above in paragraphs 14(a) and (b), that they had been permanently replaced:

Clarence Adams	Eric Ocasio
David Gifford	Malik Coleman
La'kesia Johnson	Andre Riggs
Courtney Graham	Raymond Reid
Miles Watson	Borris H. Reid

Andre Bellato	Steven Ashurst
Jerome Thompson	Shaun Morgan
Trevor Mitchell	Stanley Galloway
Ray Meyers	Brent Randein
Marlon Gayle	Corey Williams
Richard Wilcher	Raymond Williams

(b). About January 30, 2013, Respondent directed the employees described above in paragraph 15(a) to, among other things, turn in their identification badges, keys, and radios, and had these employees escorted out of the facility by NYPD officers.

(c). By the conduct described above in paragraphs 15(a) and (b), Respondent discharged the named employees on January 30, 2013.

(d). On various dates beginning on February 6, 2013, and ending on March 20, 2013, Respondent reinstated the named employees to their former positions of employment without back pay.

(e). Respondent engaged in the conduct described above in paragraphs 15(a) through (d) because the named employees of Respondent assisted the Charging Party and engaged in concerted activities, and to discourage employees from engaging in these activities.

16. By the conduct described above in paragraphs 7 and 8, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

17. By the conduct described above in paragraphs 11 through 13, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act

18. By the conduct described above in paragraph 15, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above, the Acting General Counsel seeks an Order requiring that the Notice be read to employees during working time by a high level official of Respondent.

As part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the General Counsel seeks an Order requiring Respondent to: (1) bargain on request within 15 days of a Board Order; (2) bargain on request for a minimum of 15 hours a week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; (3) prepare written bargaining progress reports every 15 days and submit them to the Regional Director and also serve the reports on the Charging Party to provide the Charging Party with an opportunity to reply; and (4) make whole employee negotiators for any earnings lost while attending bargaining sessions.

As part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 7 and 8, the Acting General Counsel seeks an Order requiring Respondent to bargain in good faith with the Charging Party, on request, for an additional period of 12 months as provided for by *Mar-Jac Poultry*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

As part of the remedy for the unfair labor practices alleged above in paragraphs 15(a) through (e), the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. The Acting General Counsel further seeks that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated complaint. The answer must be **received by this office on or before May 13, 2013, or postmarked on or before May 11, 2013**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's

website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated complaint are true.

Any request for an extension of time to file an answer must, pursuant to Section 102.111(b) of the Board's Rule and Regulations, be filed by the close of business on May 10, 2013. The request should be in writing and addressed to the Regional Director of Region 29.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **May 29, 2013, at 9:30 a.m.** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated complaint. The procedures to be followed at the hearing are described in the

attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: April 29, 2013

/s/

JAMES PAULSEN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CABLEVISION SYSTEMS NEW YORK CITY CORPORATION and CABLEVISION SYSTEMS OF NEW YORK CITY CORPORATION

Case 29-CA-097013; 29-CA-097557; 29-CA-100175

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on , I served the above-entitled document(s) by **certified or regular mail,** as noted below, upon the following persons, addressed to them at the following addresses:

PAUL HILBNER , Vice President, Human Resources for Field Operations CABLEVISION SYSTEMS NEW YORK CITY CORPORATION 9502 AVENUE D BROOKLYN, NY 11236-1811	**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**
G. PETER CLARK , ESQ. 950 3RD AVE 14TH FLOOR NEW YORK, NY 10022-2705	**REGULAR MAIL**
RICK LEVESQUE CABLEVISION SYSTEMS OF NEW YORK CITY CORPORATION 9502 AVENUE D BROOKLYN, NY 11236-1811	**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**
PETER CLARK , Attorney KAUFF MCGUIRE & MARGOLIS LLP 950 3RD AVE FL 14 NEW YORK, NY 10022-2773	**REGULAR MAIL**

GABRIELLE SEMEL , District Counsel
COMMUNICATION WORKERS OF AMERICA, DISTRICT 1 - LEGAL DEPARTMENT
350 7TH AVE
FL 18
NEW YORK, NY 10001-5013

REGULAR MAIL

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
80 PINE ST
FL 37
NEW YORK, NY 10005-1728

CERTIFIED MAIL

DANIEL E. CLIFTON , ESQ.
LEWIS, CLIFTON & NIKOLAIDIS, P.C.
350 7TH AVE
STE 1800
NEW YORK, NY 10001-5013

REGULAR MAIL

_____
Date

Enter NAME, Designated Agent of NLRB
Name

_____
Signature

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 29-CA-097013

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

PAUL HILBNER, Vice President, Human
Resources for Field Operations
CABLEVISION SYSTEMS NEW YORK
CITY CORPORATION
9502 AVENUE D
BROOKLYN, NY 11236-1811

G. PETER CLARK, ESQ.
950 3RD AVE
14TH FLOOR
NEW YORK, NY 10022-2705

GABRIELLE SEMEL, District Counsel
COMMUNICATION WORKERS OF AMERICA, DISTRICT 1 - LEGAL DEPARTMENT
350 7TH AVE
FL 18
NEW YORK, NY 10001-5013

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
80 PINE ST
FL 37
NEW YORK, NY 10005-1728

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CABLEVISION SYSTEMS CORPORATION

Employer

and

TIFFANY OLIVER

Petitioner **Case 29-RD-098466**

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (CWA)

Union

ORDER DISMISSING PETITION

On February 15, 2013, Tiffany Oliver, herein called "the Petitioner," filed a petition to decertify the Communication Workers of America, AFL-CIO, herein called "the Union," from being the exclusive collective bargaining representative of certain employees of Cablevision Systems Corporation, herein called "the Employer." An election agreement was approved by the undersigned on February 22, 2013, scheduling the election for a date, time, and place to be determined by the Region pending the final resolution of unfair labor practice charges filed by the Union against the Employer in Case Nos. 29-CA-097013, 29-CA-097557, and 29-CA-100175, if appropriate.

Those charges alleged, among other things, that the Employer violated Section 8(a)(5) of the Act by engaging in a pattern of surface bargaining with no intention of reaching agreement with the Union, and that the Employer violated Section 8(a)(3) of the Act by discharging 22 employees for engaging in protected, concerted activities. On April 29, 2013, the undersigned

issued a Consolidated Complaint and Notice Hearing on the above-described allegations, among others, scheduling a hearing to be held before an Administrative Law Judge on May 29, 2013.

As set forth in the Consolidated Complaint, as part of the remedy for the alleged unfair labor practices, the Acting General Counsel seeks a remedy of a 12-month extension of the certification year to restore the status quo and permit the parties to actually bargain in good faith toward an initial collective bargaining agreement for at least one year. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). If the Acting General Counsel is successful in securing this remedy, it would preclude a question concerning representation from being raised at this time, as it would allow the Employer to benefit from its own failure to carry out its statutory obligation to bargain in good faith for at least one year. *Id.* at 787. Accordingly, the instant petition is dismissed subject to reinstatement.

Additionally, the investigation of the above-captioned unfair labor practice charges revealed probative evidence that employee disaffection from the Union, and a cause for the employees signing the showing of interest submitted in support of the petition, was the delay in bargaining that resulted from the Employer's alleged unlawful surface bargaining. The investigation further revealed probative evidence that employee disaffection from the Union, and an additional cause for employees signing the showing of interest, was the Employer's alleged unlawful termination of 22 employees who engaged in protected, concerted activities. If true, there are causal nexuses between the decertification petition and the alleged unfair labor practices engaged in by the Employer.

Based on the all of the above,

IT IS ORDERED that the Petitioner's petition is dismissed subject to reinstatement. Upon the final resolution of the above-captioned unfair labor practice charges, the Petitioner may

apply to have the instant petition reinstated if the charges are ultimately found to be without merit. An application for reinstatement of the petition under any other circumstances will be denied.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 14, 2013.** The request may be filed electronically through the Agency's website, www.nlrb.gov,[1] but may **not** be filed by facsimile.

Dated: April 30, 2013

JAMES PAULSEN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

[1] To file the request for review electronically, go to www.nlrb.gov, select **File Case Documents**, click on the NLRB Case Number, and follow the detailed instructions.

EXHIBIT 3

INTERNET
FORM NLRB-508
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to contact
Communication Workers of America and Communication Workers of America Local 1109	William Gallagher

c. Address *(Street, city, state, and ZIP code)*	d. Tel. No.	e. Cell No.
CWA Local 1109 1845 Utica Avenue Brooklyn, NY 11234 CWA District One 80 Pine Street, 37th Floor New York, NY 10005	(212) 344-7332	(917) 902-8095
	f. Fax No.	g. e-Mail wgallagher@cwa-union.org

h. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) ___ ___ ___ ___ ___ ___ ___ ___ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

See Attachment

3. Name of Employer	4a. Tel. No.	b. Cell No.
Cablevision New York City Corporation	c. Fax No.	d. e-Mail

5. Location of plant involved *(street, city, state and ZIP code)*	6. Employer representative to contact
1095 East 45th Street, Brooklyn, NY 11234; 827 East 92nd Street, Brooklyn, NY 11236; and 9502 Avenue D, Brooklyn, NY 11236	Harlan J. Silverstein

7. Type of establishment *(factory, mine, wholesaler, etc.)*	8. Identify principal product or service	9. Number of workers employed
Provider of cable television, internet, related services	Cable television, internet	Approximately 250

10. Full name of party filing charge	11a. Tel. No.	b. Cell No.
Cablevision New York City Corporation	212-644-1010	
	c. Fax No.	d. e-Mail
	212-909-3502	silverstein@kmm.com

11. Address of party filing charge *(street, city, state and ZIP code.)*
9502 Avenue D, Brooklyn, NY 11236

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] Harlan J. Silverstein
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Kauff McGuire & Margolis LLP
Address 950 Third Ave., 14th Floor, New York, NY 10022 *(date)* 8/4/14

Tel. No.	212-644-1010
Cell No.	
Fax No.	212-909-3502
e-Mail	silverstein@kmm.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment to Cablevision ULP Charge Against CWA and CWA Local 1109

Communication Workers of America ("CWA") and CWA Local 1109, through their agent, Malcolm Hayes, has restrained and coerced Cablevision Brooklyn employees in the exercise of their rights guaranteed by Section 7 of the NLRA by his conduct and baseless threat to personally sue these individuals, for the sole purpose of intimidating them and retaliating against them for their lawful attempts to obtain signatures from Cablevision Brooklyn employees in support of rejecting CWA Local 1109 as their bargaining agent.

Malcolm Hayes ("Hayes") is a former employee of Cablevision New York City Corporation ("Cablevision"). Hayes' employment with Cablevision terminated in or about 2007. Hayes is an agent of the CWA and CWA Local 1109. According to the CWA's most recently filed LM-2, Hayes was a part-time employee of the CWA during the period from June 1, 2012 to May 31, 2013, and upon information and belief, is currently an employee of CWA. Upon information and belief, on many occasions over the past several months, Hayes has been outside three Brooklyn Cablevision facilities soliciting support for the CWA and CWA Local 1109, the collective bargaining representative of approximately 250 Cablevision employees employed out of the three Brooklyn facilities. On July 21, 2014, during a collective bargaining session between Cablevision and the CWA Local 1109, documents solicited by Hayes were delivered to the Company by William Gallagher, a representative of the CWA.

Three Cablevision employees in the Brooklyn bargaining unit represented by CWA Local 1109 have recently been engaged in an effort to gather signatures for a petition to

decertify CWA Local 1109. Their activities in opposition to CWA Local 1109 are protected and guaranteed by Section 7 of the NLRA.

In signed statements, two of these employees have detailed the threatening and intimidating acts by Malcolm Hayes. On Wednesday, July 30, 2014, Hayes confronted one of these employees ("Employee No. 1") outside Cablevision's facility located at 9502 Avenue D, Brooklyn, New York. Employee No. 1 was off from work that day. She had arrived at approximately 6 a.m., and, while outside the Avenue D facility, was obtaining signatures for a petition to decertify CWA Local 1109. Employee No. 1's activities on July 30, 2014 in gathering signatures for a decertification petition are guaranteed by Section 7 of the NLRA. At approximately 9 a.m., while Employee No. 1 was in her car outside the Avenue D facility, Hayes pointed what appeared to be a phone camera at her and, as he appeared to be filming her, said "what you are doing is unlawful" and accused her of lying to Cablevision Techs that they would get more money if they signed a decertification petition. Employee No. 1 did not tell Cablevision Techs they would get more money if they signed a decertification petition, and made that clear to Hayes.

On Thursday, July 31, 2014, at approximately 4 p.m., another one of these employees ("Employee No. 2") was outside the Cablevision facility located at 827 East 92nd Street, Brooklyn, New York, when Hayes approached her. Hayes handed Employee No. 2 three pieces of paper, which were identical forms addressed to her, Employee No. 1 and the third employee ("Employee No. 3") involved in an effort to gather signatures for a decertification petition; the forms appeared to be signed by three Cablevision employees requesting their names be removed from a decertification petition. During this

conversation, Hayes made statements to Employee No. 2 to the effect that she had lied to the three Cablevision employees by telling them they would get raises if they signed the petition (which is untrue), and stated, "You have 24 hours to take their names off the decertification list and prove to me by e-mail that you have done so or you will hear from the CWA lawyers within 24 hours. The CWA will sue you, [Employee No. 3 and Employee No. 1] the same way they got Cablevision into court." Employee No. 2 went inside and immediately called Employee No. 1 because she felt she was being harassed and intimidated by Hayes. Employee No. 2 informed Employee No. 1 of the forms given to her by Hayes and told her what Hayes had said to her regarding the CWA suing her, Employee No. 1 and Employee No. 3.

Employee No. 1 became very nervous as a result of Hayes' threat, and asked a Cablevision supervisor for help. She became so nervous and concerned that she later "started to cry" and has reported difficulties sleeping. Employee No. 2 also asked Cablevision for help in regard to Hayes' threat. Hayes' threat unquestionably caused these employees to feel rattled and anxious.

Section 8(b)(1)(A) of the NLRA forbids a labor organization or its agents "to restrain or coerce employees in the exercise of rights guaranteed in Section 7." Hayes' July 31st threat was clearly designed to restrain or coerce Employee No. 1, Employee No. 2 and Employee No. 3 in the exercise of rights guaranteed by Section 7 of the NLRA, and thus constitutes a violation of Section 8(b)(1)(A) of the NLRA. Hayes' threat that Employee No. 1, Employee No. 2 and Employee No. 3 would be sued if they did not remove names from the decertification petition within 24 hours is particularly egregious, as there is no

valid basis whatsoever for filing a lawsuit or unfair labor practice charge against these employees. The threat was undoubtedly intended to intimidate the employees into halting their legally protected and guaranteed activities in opposition to the CWA, and clearly had the intended effect of unsettling and upsetting them.

EXHIBIT 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CSC HOLDINGS, LLC and **CABLEVISION SYSTEMS NEW YORK CITY CORP.**, a Single Employer,

Respondent

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

Charging Party

Case Nos. 29-CA-134419
29-CA-135428
29-CA-135822
29-CA-136512
29-CA-136759
29-CA-137214

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case Nos. 29-CA-134419, 29-CA-135428, 29-CA-135822, 29-CA-136512, 29-CA-136759, and 29-CA-0137214, which are based on charges filed by the Communications Workers of America, AFL-CIO, ("Union"), respectively, against CSC Holdings, LLC (CSC Holdings) and Cablevision Systems New York City Corp. (Cablevision Systems), a single employer (collectively Respondent) are consolidated. This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1. The charges in the above cases were filed by the Union as set forth in the following table, and a copy was served by regular mail upon the Respondent on the dates indicated:

	Case No.	Amendment	Respondent	Date Filed	Date Served
a.	***29-CA-134419***		***Cablevision Systems New York City Corp.***	***08/08/14***	***08/11/14***
b.	***29-CA-134419***	***First Amended***	***CSC Holdings, LLC and Cablevision Systems New York City Corp., a single employer***	***10/30/14***	***10/31/14***
c.	***29-CA-135428***		***Cablevision Systems New York City Corp.***	***08/22/14***	***08/26/14***
d.	***29-CA-135428***	***First Amended***	***Cablevision Systems New York City Corp.***	***10/15/14***	***10/16/14***
e.	***29-CA-135428***	***Second Amended***	***CSC Holdings, LLC and Cablevision Systems New York City Corp., a single employer***	***10/30/31***	***10/31/14***
f.	***29-CA-135822***		***Cablevision Systems New York City Corp.***	***08/28/14***	***09/03/14***
g.	***29-CA-136822***	***First Amended***	***CSC Holdings, LLC and Cablevision Systems New York City Corp., a single employer***	***10/30/14***	***10/31/14***
h.	***29-CA-136512***		***Cablevision Systems New York City Corp.***	***09/09/14***	***09/11/14***
i.	***29-CA-136512***	***First Amended***	***CSC Holdings, LLC and Cablevision Systems New York City Corp., a single***	***10/30/14***	***10/31/14***

			employer		
j.	*29-CA-136759*		*Cablevision Systems New York City Corp.*	*09/15/14*	*09/16/14*
k.	*29-CA-136759*	*First Amended*	*CSC Holdings, LLC and Cablevision Systems New York City Corp., a single employer*	*10/30/14*	*10/31/14*
l.	*29-CA-137214*		*Cablevision Systems New York City Corp.*	*09/22/14*	*09/22/14*
m.	*29-CA-137214*	*First Amended*	*CSC Holdings, LLC and Cablevision Systems New York City Corp., a single employer*	*10/30/14*	*10/31/14*

2. (a) At all material times CSC Holdings, a domestic corporation with an office and headquarters located at 1111 Stewart Avenue, Bethpage, New York, has been engaged in various business enterprises, including the provision of cable television and communications services in various parts of the United States.

(b) At all material times Cablevision Systems, a domestic corporation with its corporate office located at 1111 Stewart Avenue, Bethpage, New York (Bethpage facility) and with a facility located at 500 Brush Avenue, Bronx, New York and with facilities located in Brooklyn, New York, including the facility located at 96th Street in Brooklyn (herein called the 96th Street Brooklyn facility), has been engaged in the business of providing broadband cable communication services to residential and commercial customers in the Bronx, Brooklyn, and other locations in New York, New York.

(c) At all material times, CSC Holdings and Cablevision Systems have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common management and have held themselves out to the public as a single-integrated business enterprise.

(d) Based on its operations described above in subparagraph (c), CSC Holdings and Cablevision Systems constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(e) Annually, in the course and conduct of their business operations, CSC Holdings and Cablevision Systems, separately and collectively, derive gross revenues in excess of $500,000.

(f) Annually, in the course and conduct of their business operations, CSC Holdings and Cablevision Systems separately and collectively, purchase and receive at their facilities in New York State, goods and services valued in excess of $5,000 directly from suppliers located outside the State of New York.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of

Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

James L. Dolan	Chief Executive Officer
Barry Monopoli	Vice President Field Operations
Bob Kennedy	Director, Outside Plant
Tommy Lynch	Area Operations Manager
Jay Morales	Field Service Supervisor
Sheldon Young	Field Service Supervisor
Phil Furlong	Field Service Supervisor
Andrew Daley	Outside Plant Supervisor
Kent Strachan	Outside Plant Supervisor
Unnamed Security Officer	Security Officer, Bethpage Facility

(b) At all material times, The Honest Ballot Association was contracted by Respondent to conduct a poll of its employees and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) The following employees of Respondent constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **Included:** All full-time and regular part-time field service technicians, outside plant technicians, audit technicians, inside plant technicians, construction technicians, network fiber technicians, logistics associates, regional control center (RCC) representatives and coordinators employed by the Employer at its Brooklyn, New York facilities.

Excluded: All other employees, including customer service employees, human resource department employees, professional employees, guards, and supervisors as defined in Section 2(11) of the Act.

(b) On February 7, 2012, following the conduct of an election in Case No. 29-RC-070897, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

7. (a) In or about January 2014, Respondent changed the cellular service provider covering mobile phones used by the Unit, eliminating the previously used Nextmail System.

(b) The subject set forth above in paragraph 7(a) relates to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 7(a) without affording the Union an opportunity to bargain with Respondent with respect to this change and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

8. (a) On or about July 29, 2014, Respondent implemented and maintained a new rule in connection with the Estimated Time of Arrival (ETA) Direct System requiring that employees input their work start times when they arrive at job locations, and not when leaving for job locations.

(b) On or about July 29, 2014, Respondent implemented a new system of disciplining employees for entries in the ETA Direct System.

(c) The subjects set forth above in paragraph 8(a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraph 8(a) and (b) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

(e) As a result of Respondent's conduct described above in paragraph 8(a) and (b), on July 29, 2014, Respondent issued a written warning to its employee Eric Ocasio.

(f) Respondent engaged in the conduct described above in paragraph 8(e) because Eric Ocasio assisted the Union and engaged in concerted activities, and to discourage employees from engaging in those activities.

9. Respondent, by the individuals named below, at Respondent's 96th Street Brooklyn facility, on or about the dates opposite their names, solicited employee complaints and grievances, and promised its employees increased benefits and improved terms and conditions of employment if they abandoned their support for and membership in the Union.

	Agent	**Date**
(a)	Barry Monopoli	Various dates in July and August 2014
(b)	Jay Morales Bob Kennedy Andrew Daley	At toolbox meetings on various dates between July and August 2014

	Kent Strachan Sheldon Young Phil Furlong Tommy Lynch	

10. (a) On or about the following dates, Respondent issued disciplinary warnings to its employee Jerome Thompson (Thompson):

	Date
(i)	March 3, 2014
(ii)	March 3, 2014
(iii)	On or after July 7, 2014
(iv)	On or after July 31, 2013
(v)	On or after August 6, 2014
(vi)	On or after August 7, 2014

(b) Respondent engaged in the conduct described above in subparagraphs 10(i) through (vi) because Thompson assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

11. (a) On or about August 6, 2014, Thompson concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees by

demanding that Respondent pay Unit employees the same wage Respondent pays its similarly situated employees at its other facilities.

(b) On or about August 6, 2014, Respondent issued a warning to Thompson.

(c) Respondent engaged in the conduct described above in paragraph 11(b) because Thompson engaged in the conduct described above in paragraph 11(a), and to discourage employees from engaging in these or other concerted activities.

12. On or about August 7, 2014, Respondent, by an unknown Security Officer at the Bethpage facility, threatened to arrest or cause the arrest of its employees because they engaged in protected Union activity.

13. (a) On or about August 20, 2014 Respondent discharged Thompson.

(b) Since on or about August 20, 2014, Respondent has failed and refused to reinstate or offer to reinstate Thompson to his former position.

(c) Respondent engaged in the conduct described above in paragraph 13(a) and (b) because Thompson assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

14. (a) Since on or about August 21, 2014, the Union has requested, via electronic mail, that Respondent furnish the Union with a copy a video concerning the parties' collective bargaining that Respondent showed to Unit employees on or about August 21, 2014.

(b) The information requested by the Union, as described above in paragraph 14(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since on or about August 27, 2014, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 14(a).

15. On or about September 9, 2014, Respondent, by James Dolan (Dolan), at a meeting with its employees at its 96th Street Brooklyn facility:

(a) Threatened its employees with continued loss of a pay increase if they voted in the Employer's sponsored poll to keep the Union as their bargaining representative;

(b) Threatened its employees with the loss of the benefit of new technology and training if they voted to keep the Union; and

(c) Impliedly threatened its employees with loss of employment because of their support for the Union.

16. On or about September 9, 2014, Respondent by Dolan, at a meeting with its employees at its 96th Street Brooklyn facility bypassed the Union and dealt directly with its employees in the Unit by promising to engage in the following conduct if employees voted to get rid of the Union:

(a) Increase employee pay; and

(b) Pay the Union to disclaim interest in representing Respondent's Unit employees.

17. On or about September 10, 2014, Respondent, by its agent The Honest Ballot Association, at its 96th Street Brooklyn:

(a) polled Unit employee about whether they continued to want the Union to be their exclusive collective-bargaining representative;

(b) created the impression among Respondent's employees that their Union activities were under surveillance by:

(i) requiring that employees present identification; and

(ii) by assigning to employees unique personal identification numbers in order to vote in the poll referenced in paragraph 17(a) above.

(c) On or about September 10, 2014, Respondent, by its agent The Honest Ballot Association, at its 96th Street Brooklyn facility, surveilled employees' Union activities by watching employees as they voted in the poll referenced in paragraph 17(a) above.

18. By the conduct described above in paragraphs 9, 11, 12, 15, and 17, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

19. By the conduct described above in paragraphs 8(e)-(f), 10, 11 and 13 Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

20. By the conduct described above in paragraphs 7, 8, 14, and 16, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

21. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE As part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that the Notice be read to employees during working

time by a high level official of Respondent at its facilities in the Brooklyn, New York. Further, the General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations; it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before November 20, 2014, or postmarked on or before November 19, 2014.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the bases that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer by signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of that answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-Filing rules require that

such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

Any request for an extension of time to file an answer must, pursuant to Section 102.111(b) of the Board's Rules and Regulations, be filed by the close of business on November 17, 2014. The request should be in writing and addressed to the Regional Director of Region 29.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **January 6, 2015, at 9:30 a.m.** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at a hearing room located at 2 MetroTech Center, 5th Floor, Brooklyn, NY. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 6, 2014
Brooklyn, New York

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, Suite 5100
Brooklyn, NY 11201-3838

Attachments

EXHIBIT 5

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov
Telephone: (718)330-7713
Fax: (718)330-7579

November 12, 2014

TIFFANY OLIVER
969 E 102 ST
BROOKLYN, NY 11236

Re: Cablevision Systems Corp.
Case 29-RD-138839

Dear Ms. Oliver:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: On April 17, 2013 an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in Case Nos. 29-CA-097013 et al. against CSC Holdings, LLC and Cablevision Systems New York City Corp., a single employer ("Employer"), alleging that the Employer violated section 8(a)(1), (3) and (5) of the National Labor Relations Act ("Act") by engaging in surface bargaining, threatening employees for engaging in union activity, and discharging twenty-two (22) Brooklyn Cablevision employees for their union and protected concerted activity. A hearing was conducted before Administrative Law Judge Steven Fish in Case Nos. 29-CA-097013 et al. on September 16 through 20, 23 through 26, 30, October 25, and December 3 through 6, 10, 13, 16, and 17, 2013. A decision is still pending in this matter before the Administrative Law Judge.

On November 6, 2014, an Order Consolidating Cases, Complaint and Notice of Hearing issued in Case Nos. 29-CA-134419 et al. alleging that the Employer violated Section 8(a)(1),(3), and (5) of the Act by implementing unilateral changes to employees terms and conditions of employment, threatening employees for engaging in union activity, issuing a warning to an employee for engaging in protected or concerted activity, and the discharge of an employee for his union and protected concerted activity. The pending allegations, if true, prevent a question concerning representation from being raised because of the unremedied Section 8(a)(5) violations. Moreover, the above-listed allegations, if found to be committed, destroy the

laboratory conditions requisite for determining the desires of Brooklyn Cablevision employees regarding continued representation by the Communication Workers of America, AFL-CIO

Therefore, I find that further proceedings on this petition are unwarranted. Accordingly, I am dismissing the petition in this matter. The petition is subject to reinstatement, if appropriate, after final disposition of the charges in Case Nos. 29-CA-097013 et al. and 29-CA-134419 et al. The Petitioner may apply to have the instant petition reinstated if the unfair labor practice charges in Case Nos. 29-CA-097013 et al. and 29-CA-134419 et al. are found to be without merit. An application for reinstatement of the petition under any other circumstances will be denied.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on **November 26, 2014**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on November 26, 2014.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this

proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

James G. Paulsen
Regional Director

cc: Office of the Executive Secretary (by e-mail)

HARLAN SILVERSTEIN, ESQ.
KAUFF, MCGUIRE & MARGOLIS, LLP
950 3rd Ave Fl 14
New York, NY 10022-2773

GABRIELLE SEMEL, District Counsel
COMMUNICATION WORKERS OF AMERICA,
DISTRICT 1 - LEGAL DEPARTMENT
350 Seventh Avenue
18th Floor
NEW YORK, NY 10001-5013

EXHIBIT 6

JD(NY)–47–14
Bronx, NY
Brooklyn, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CSC HOLDINGS, LLC and CABLEVISION SYSTEMS NEW YORK CITY CORPORATION, a Single Employer	Cases 02-CA-085811
	02-CA-090823
and	29-CA-097013
	29-CA-097557
COMMUNICATION WORKERS OF AMERICA, AFL-CIO	29-CA-100175
	29-CA-110974

Sharon Chau, Esq. (Region 29), RyAnn McKay Hooper, Esq. (Region 29), Genaira Tyce, Esq. (Region 29) and David Gribben, Esq. (Region 2), Brooklyn, NY and New York, NY for the General Counsel.
Harlan Silverstein, Esq. and Raymond McGuire, Esq. (Kauff McGuire & Margolis), New York, NY for the Respondent.
Doreen Davis, Esq. and Kristina Yost, Esq. (Jones Day), New York, NY for the Respondent.
Eugene Scalia, Esq. and Jason Schwartz, Esq. (Gibson Dunn & Crutcher), Washington, DC for the Respondent.
Gabrielle Semel, Esq., New York, NY for the Charging Party.
Daniel E. Clifton, Esq. (Lewis Clifton & Nikolaidis PC), New York, NY for the Charging Party.

DECISION

Steven Fish, Administrative Law Judge: Pursuant to charges and amended charges filed by Communication Workers of America, AFL-CIO (CWA or the Union) in Case No. 02-CA-085811 and Case No. 02-CA-090823, on various dates between July 12, 2012 and April 12, 2013, the Director for Region 2 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on April 17, 2013, alleging that CSC Holdings, LLC and Cablevision Systems of New York City Corporation, a single Employer (Respondent or Cablevision) violated Section 8(a)(1) of the Act.

Upon charges filed by the Union in Case No. 29-CA-097013 on January 24, 2013 and amended on January 28 and April 25, 2013, in Case No. 29-CA-097557 on January 31, 2013 and amended on February 19 and April 25, 2013 and in Case No. 29-CA-100175 on March 12, 2013 and amended on April 12, 2013, the Director for Region 29 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on April 29, 2013 against Respondent.

On May 15, 2013, Case Nos. 02-CA-085811 and 02-CA-090823 were transferred to Region 29, and on May 29, 2013, the Director of Region 29 issued an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing.

Upon a charge and amended charge in Case No. 29-CA-110974 filed by the Union on August 9 and 10, 2013, a Notice to Amend Second Consolidated Complaint and to further

361 U.S. 477, 485 (1960)). However, "[a] party is entitled to stand firm on a position if he reasonably believes that it is fair and proper or that he has sufficient bargaining strength to force the other party to agree." *Atlanta Hilton & Tower,* 271 NLRB 1600, 1603 (1984) (citing *NLRB v. Advanced Business Forms Corp.,* 474 F.2d 457, 467 (2nd Cir. 1973)).

"In determining whether a party has violated its statutory duty to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table." *Public Service Co.,* supra at 487 (internal citations omitted). From the context of a party's total conduct, the Board determines whether the party is "engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of agreement." Id.

In applying these principles, here, and examining Respondent's conduct both at and away from the bargaining table, I conclude that the evidence fails to establish that Respondent engaged in surface bargaining.

I have examined Respondent's conduct at the bargaining table and have, as detailed above, rejected all the specific alleged violations of the Act and/or indicia of surface bargaining alleged in the complaint and asserted by General Counsel and Charging Party. I reaffirm these conclusions and do not find that those assertions and allegations, either singly or collectively, establish an intent by Respondent to frustrate agreement or an intent not to reach agreement.

Rather, I conclude that the evidence indicates that Respondent engaged in hard but lawful bargaining to achieve a contract that it considers desirable. *St. George Warehouse*, supra at 906, 907; *Litton Microwave Cooking Products*, 300 NLRB 324, 336 (1990).

As I have detailed above in discussing the numerous allegedly unlawful conduct engaged in by Respondent concerning the proposals that it made, I have concluded that Respondent did not insist on any of its proposals, that it bargained with the Union over all of them, gave explanations of its positions, made concessions and movement on these issues in response to the Union's concerns and, in fact, ultimately reached agreement with the Union on a number of important issues, such as arbitration, union security and performance of bargaining unit work, and moved closer to agreement on other contentious issues, such as contracting[53] and discipline and discharge.

Such conduct of Respondent, where it has moved towards the Union's position in a number of areas and agreed on a number of issues,[54] including some significant issues, as detailed above, does not reflect that it intended to frustrate agreement or that it engaged in

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[53] I emphasize that, with respect to contracting, the status quo involved a situation, where Respondent already contracted out 50% of bargaining unit work, consistent with industry practice. Yet, Respondent moved from its initial proposal of unlimited discretion to contract out to addressing the Union's concerns and agreeing to limitations on this right and agreeing to restricting contracting that would cause layoffs for trouble calls, which represents the bulk of the work contracted out by Respondent. While the parties haven't yet agreed on the details of this proposal (i.e. whether a small group of non-technicians would be covered by the non-layoff language), the evidence reflects substantial movement by Respondent, which is contrary to the status quo in direct response to the Union's concerns.

[54] The record reflects that the parties reached 45 tentative agreement over the course of 29 bargaining sessions between May 30, 2012 and December 12, 2013, plus seven days of mediation in May of 2013.

surface bargaining. *St. George Warehouse*, supra (employer made concessions and reached agreement with the union on a number of issues); *Litton Microwave*, supra (employer demonstrated flexibility, made concessions, reached agreements and provided explanations of its bargaining positions); *88 Transit Lines*, supra, 300 NLRB at 179 (parties reached agreements and movement made by both parties); *Commercial Candy Vending Division*, 294 NLRB 908, 909-910 (1989) (employer modified, redrafted and withdrew proposals in major areas in response to concerns expressed by the union); *Tritac Corp.*, 286 NLRB 522, 523 (1987) (parties reached agreement on numerous subjects, substantial progress was made on some issues not agreed upon and parties discussed at length issues on which they have not reached full agreement).

I am cognizant of the contentions made by General Counsel and Charging Party that many of the agreement reached as well as some of Respondent's flexibility that occurred with respect to some issues did not occur until after the instant charges were filed and/or the complaint was issued. I find that contention misplaced and also conclude that it is inappropriate to measure Respondent's bargaining only through March of 2013 as the complaint alleged. Indeed, General Counsel and Charging Party are not consistent in their contentions since they continue to rely on events past March of 2013 in arguing that Respondent engaged in surface bargaining. Indeed, notwithstanding the complaint's restriction of bad faith bargaining through March of 2013, it is clear that General Counsel and Charging Party are contending that Respondent's entire bargaining through December of 2013 was unlawful and the trial was litigated in that fashion with testimony about and bargaining notes introduced from all of the parties' sessions.

Thus, I find it inappropriate to parcel out and evaluate Respondent's bargaining proposals differently, pre- or post-charges or complaint. In my view, bargaining must be considered based on the totality of the bargaining from start to finish. Indeed, it has been held that "the key question in surface bargaining cases is not what respondent initially offers, but what its bottom line position is throughout or at the end of negotiations." *Peelle Co.*, 289 NLRB 113, 120 (1988) (employer, during the course of negotiations, made substantial concessions, eliminated some of its objectionable proposals and made significant offers on substantive issues). See also *88 Transit Lines*, supra, 300 NLRB at 178 ("Indeed, a major function of the bargaining process is reaching common ground that represents modifications of language contained in parties' initial proposals").

I, therefore, reject any analysis based on whether or when Respondent modified its positions or reached agreements with the Union on various proposals, as detailed above.

Rather, I have evaluated Respondent's bargaining in its entirety and conclude, as related above, that it does not reflect an intent to frustrate agreement or constitute surface bargaining.

I have also considered, as argued by General Counsel, Respondent's conduct outside of the bargaining table. Indeed, in certain circumstances, the Board places significant reliance on away from table conduct in finding surface bargaining allegations. *U.S. Ecology Corp.*, supra, 331 NLRB 223, 224 (2000); *PSO*, supra, 334 NLRB at 489-490 (2001).

However, the Board has observed that it generally will not find surface bargaining to exist based solely on outside the table conduct. *St. George Warehouse*, supra, 341 NLRB at 907-908 (2009); *Litton Microwave*, supra, 300 NLRB at 330; *Wallace Metal Products*, 244 NLRB 41, 49-50 (1979).

Here, I have found above that Respondent violated 8(a)(1) and (5) of the Act by unilaterally instituting training for unit employees and also by cancelling the training without notifying and bargaining with the Union. I also found that Respondent has violated Section 8(a)(1) of the Act by statements made by Dolan, amounting to unlawful solicitation of grievances and promises of benefit, by Levesque's threat of futility of bargaining and by unlawfully directing employees not to engage in union activities. Further, I am also finding below that Respondent unlawfully discharged 22 employees.

However, none of these violations are sufficient to change my conclusions that Respondent has not engaged in surface bargaining. None of these violations had any direct effect on the bargaining in my view nor are they sufficient, singly or collectively, to establish an intent to frustrate bargaining in the absence of any unlawful conduct at the table, as I have found above.

I recognize that my findings below that Respondent unlawfully discharged 22 employees constitutes a serious violation of the Act, but I cannot find it sufficient itself to establish bad faith bargaining, even with the other unfair labor practices found. See *St. George Warehouse*, where the Board refused to find a surface bargaining violation, even though the employer, therein, unilaterally transferred work in violation of Section 8(a)(1) and (5) of the Act and eroded almost the entire unit (reducing the unit from 42 to 8). The Board concluded, in absence of direct evidence that these violations impacted negotiations, it would not find surface bargaining. *Litton Microwave*, supra (unlawful changes and unlawful failure to grant wage increases, insufficient to establish bad faith bargaining); *Flying Foods*, 345 NLRB 101, 104, 108 (2005) (unilateral changes and unlawful threats and interrogations, insufficient indicia of surface bargaining); *Hostar Mareine Transport*, 298 NLRB 188, 197 (1990) (suspension and discharge of employees for engaging in protected activity, found to constitute animus against the union but insufficient of bad faith bargaining to warrant a surface bargaining violation); *Wallace Metal*, supra, 244 NLRB at 50 (unilateral refusal to pay vacation to employees, plus refusal to furnish relevant information to the union, insufficient to establish surface bargaining).

Accordingly, based on the above analysis, I conclude that General Counsel has failed to establish that Respondent engaged in surface bargaining, and I shall recommend dismissal of this allegation in the complaint.

K. The Alleged Discharge of 22 Employees

On January 24, 2013, the Union conducted a membership meeting, during which Calabrese discussed that it had been almost a year since the Union became the bargaining representative of the employees, and they were still no closer to an agreement.

Calabrese and the employees discussed possible actions that could be done to move the process along. Some employees suggested a "sick out," but Calabrese stated that that was too aggressive and scheduled another meeting for January 29, 2013.

On January 24, 2012, the Union filed charges in Case No. 29-CA-097013, alleging surface bargaining by Respondent, which was amended on January 28 to allege other unlawful conduct by Respondent.

Meanwhile, Martin Luther King Day was on January 21, 2013. Respondent had received information that some employees at Respondent's 45th Street location were talking about a possible walkout on Martin Luther King Day to show support for the Union. Upon receipt of that information, there was a conference call conducted with senior management, including counsel,

not received backpay.[60] Thus, Respondent provided Williams with backpay for the period from his replacement to his recall.

The complaint alleges that the employees were engaged in a strike on January 30, 2013 in protest of Respondent's unfair labor practices of engaging in surface bargaining with the Union. In view of my findings above that General Counsel has failed to establish the surface bargaining allegations in the complaint, it follows that the allegation that employees were engaged in an unfair labor practice strike must also be dismissed. *Hyatt Hotels Corp.*, 296 NLRB 289, 316 (1989). I so recommend.

The complaint also alleges, alternatively, that the employees were unlawfully discharged on January 30, 2013, while Respondent contends that the employees were permanently replaced. In that connection, General Counsel and Charging Party make several arguments and contentions in support of their positions that Respondent discharged the employees. These include that the employees were not on strike at all, but rather, were engaged in protected concerted activity of enforcing Respondent's open door policy. Therefore, the employees cannot be disciplined for engaging in this conduct unless their conduct rises to the level of misconduct that causes loss of the Act's protection. *Burnup & Sims*, 379 US 21 (1964); *Marshall Engineered Products*, 351 NLRB 767 (2007); *Atlantic Scaffolding*, 356 NLRB #113 (2011) (employer violated Act by discharging 100 employees, who stopped work and demanded to speak with management regarding employer's plan to change a promised wage increase to an unsecured bonus).

General Counsel also makes other alternative arguments that assuming that Respondent did replace the employees, Respondent had failed to meet its burden of proof that the employees were permanent replacements, *Gibson Greetings*, or that it had hired the permanent replacements prior to informing the employees that they were permanently replaced, *Consolidated Delivery & Logistics*, 337 NLRB 524, 525 (2002) (advising economic strikers that they have been permanently replaced when they have not been permanently replaced constituted a discharge in violation of Section 8(a)(1) and (3) of the Act).

Additionally, Charging Party raises the argument, based on *Avery Heights*, 350 NLRB 214, 215 (2007), that Respondent's failure to reinstate the strikers was "motivated by an illegal purpose," an exception to the normal right of employers to permanently replace strikers. *Hot Shoppes*, 146 NLRB 802, 805 (1964).

Since I find merit to one of General Counsel's arguments and conclude that based on the analysis above that Respondent discharged the 22 employees unlawfully on January 30, 2013, therefore, I find it unnecessary to decide or rule upon the other alternative arguments made by General Counsel and Charging Party. I shall, therefore, assume without deciding that as Respondent contends that the employees were on strike or, at least, engaging in a work stoppage, unless and until they were able to speak to management, that Respondent did sufficiently establish that the replacements were permanent, as opposed to temporary, and that its conditions of employment letters, signed by the replacements, were not ambiguous as contended by General Counsel. Finally, I shall not decide whether *Avery Heights* or *Hot Shoppes* is applicable herein as argued by Charging Party.[61]

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[60] None of the other recalled replacements received backpay, other than Watson, Mitchell, Wilcher and Boris Reid.

[61] I do note, however, that *Avery Heights*, cited by Charging Party does not represent Board law since it was decided only as the law of the case, pursuant to a Court of Appeals's remand,

Continued

I find it unnecessary to reach or decide these issues since I find merit to General Counsel's contentions based on *Consolidated Delivery*, supra and its progeny that Respondent's notification to the employees that they have been permanently replaced when they have not been replaced constitutes a discharge in violation of Section 8(a)(1) and (3) of the Act because the remedy would be no different, even if the other contentions raised by General Counsel and Charging Party were decided in their favor.

Turning to the issue of whether Respondent had hired permanent replacements for the strikers when it notified them that they were being permanently replaced, I note that the burden is on the employer to demonstrate that it hired the replacements on a permanent basis, and it must show that it "was a mutual understanding between the employer and the replacements that the nature of their employment was permanent." *Consolidated Delivery*, supra; *Jones Plastic & Engineering*, 351 NLRB 61, 62 (2007). In particular, a permanent replacement "constituted a replacement who will not be displaced by returning strikers when the strike is over." *Jones Plastic*, supra; *Capehorn Industry*, 336 NLRB 364, 365 (2001).

Therefore, Respondent has the burden of establishing that it hired permanent replacements for all 22 strikers before it notified them that they were permanently replaced at approximately 9:30 AM on January 30, 2013. I conclude that Respondent has failed to meet that burden. While Respondent points out that the record contains 22 signed conditions of employment letters, dated January 30, 2013, Respondent has not established when on January 30, 2013 they were signed. While the emails from Bartels and Jackson provide some indication of when they were signed, that evidence is not conclusive since Respondent did not call any of the replacements as witnesses, and Bartels did not testify about any specific replacement employee, whom he spoke to or obtained a signed form from, or precisely when or how many employees he received forms from or from Jackson.

While Levesque testified that before he notified the employees that they were being replaced at 9:30 AM (based on the tapes), McCollum had called him to inform Levesque at 9:19 AM that Bartels had signed up the other 12, and Respondent had 22 signatures, neither McCollum nor Bartels corroborated Levesque in this regard.[62]

Bartels testified that the list kept changing throughout the day due to some employees changing their minds. That testimony is confirmed by the emails, which reveal a constantly changing list that was not completed until almost 3:00 PM. Other evidence from the replacement employees, such as replacement employee Livingston Bandie, revealed that he did not sign his conditions of employment letter until after 8:00 PM. Further replacement Nicholson Pierre did not sign his conditions of employment letter until February 4, 2013, the day after he started performing tech services for Respondent, and which was after the Union had made an admittedly unconditional reinstatement on behalf of the employees on February 1, 2013. Notably, although Pierre had reported to work for Respondent on January 31, 2013, attended training, took a drug test, was told his salary by HR and eventually received a hiring letter from

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which had rejected the Board's previous decisions in *Avery Heights*, 343 NLRB 1301, 1305-1306 (2004), where the Board rejected the positions of the ALJ (ultimately sustained by the Court) that an inference of illegal motive is warranted if an employer hires permanent replacements in secret.

[62] As noted, McCollum did not testify, and Bartels testified although he did call Respondent at some point, confirming 22 technicians willing to serve, he did not recall when it was but believed that it was around noon. This is well after 9:30 AM when the strikers were notified.